Street, of Chula Vista, a wrecking yard. Appellant asked Price what kind of car he owned and Price replied, "An Impala." Appellant then said, "Those aren't Impala seats." Sergeant Purcell then asked appellant whether he had any receipts for the seats, and appellant answered that all receipts were kept at C. P. Auto Wrecking, which owned R. P. Upholstery. Sergeant Purcell took possession of the seats. Thereafter Price and Sergeant Purcell went to C. P. Auto Wrecking. From a conversation on the premises of C. P. Auto Wrecking Sergeant Purcell secured information which led him to telephone Mr. Street. Mr. Street answered the telephone, and during the conversation between Purcell and Street appellant entered the conversation on an extension telephone. During the ensuing three-way conversation Sergeant Purcell asked Street if he remembered selling to appellant or to the upholstery shop a set of black Impala bucket seats. Appellant interposed, "You remember, the ones that had the bent backs." Street replied that he remembered that he had sold appellant seats of that description from an automobile that had been demolished in a wreck.

Following that conversation Sergeant Purcell went again to see appellant. Upon the R. P. Upholstery company premises was a small, garage-type building, which Sergeant geant Purcell entered in the company of appellant and with his consent. Sergeant Purcell observed in the building quite a few items of upholstery material, bucket seats, a few consoles and other automotive equipment. He also observed a set of black bucket seats from a late model Chevrolet that were extremely dirty and the back seat with the bucket seats was very badly bent. Sergeant Purcell again asked appellant about receipts for the equipment, and appellant replied that he had all kinds of receipts because he bought a large number of interiors for automobiles. Sergeant Purcell asked appellant if he had any more bucket seats and automobile interiors at any other location, and appellant said, "No." Appellent denied that he had any such equipment in his garage at home. He also said that he would not like to show his garage to Sergeant Purcell, at which time Sergeant Purcell handed him a search warrant. The two men proceeded to appellant's garage. Appellant unlocked the garage, and

Sergeant Purcell observed a large number of bucket seats and other automotive equipment, including the console taken from Scott's automobile. Sergeant Purcell took possession of the seats and consoles belonging to Price and Scott, together with certain other seats which were later returned to appellant.

Bucket seats are ordinarily identifiable by packing slips contained in the seats, showing the type of automobile in which the seat has been placed. The packing slips from Price's and Scott's bucket seats were left in the victims' automobiles by the thieves. There was a packing slip found with the bent seats to which Street had referred, but there were no packing slips with the victims' bucket seats located on the appellant's premises.

Sufficiency of the Evidence

Direct evidence that one charged with receiving stolen property knew that it was stolen is rarely available. There was circumstantial evidence from which the jury could properly have found that appellant had the requisite guilty knowledge. Possession of recently stolen property, accompanied by an unsatisfactory explanation

or by suspicious circumstances, justifies an inference that the goods were received with knowledge that they were stolen. (*People v. Lyons* (1958) 50 Cal.2d 245,258; *People v. Du Bont* (1965) 235 Cal.App.2d 844,848.) "False or evasive answers to material questions with reference to the ownership of stolen property tend to prove such knowledge. (*People v. Reynolds* (1957) 149 Cal.App.2d 290,294; see also *People v. Cole* (1903), 141 Cal. 88,90; *People v. Boinus* (1957), 153 Cal.App.2d 618,621-622; *People v. Malouf* (1955), 135 Cal.App.2d 697,707; *People v. Hartridge* (1955), 134 Cal.App.2d 659,665; *People v. Boyden* (1953), 116 Cal.App.2d 278,288; *People v. Jacobs* (1925), 73 Cal.App. 334,339-343.)" *People v. Lyons, supra*, 50 Cal.2d at 258.

The bucket seats taken from Price's automobile on June 7, 1966, were found in appellant's possession the following day. Appellant said that he purchased those seats from Dan Street, but subsequent investigation revealed that the seats he had bought from Street were not the seats found in appellant's truck. Appellant told Price that the seats found on his truck were not Impala seats. The statement was false. Appellant denied that he

had additional automobile interiors at his residence or garage; the statement was false.

The evidence, together with the inferences appropriately drawn therefrom, adequately sustains the conviction.

Admission of Incriminating Statements Not Error

Appellant urges that there was error in the admission into evidence of incriminating statements made by appellant to Sergeant Purcell because he says the statements were elicited without complying with the *Dorado-Escobedo-Miranda* warnings.[1] The record shows adequate compliance with the *Dorado-Escobedo* warning; therefore the sole possible ground for complaint is the failure to comply with the *Miranda* warning. There was no objection to the admission of the challenged testimony in the trial court. The case was tried after the *Miranda* case was well known. The objection cannot be raised for the first time

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[1] *People v. Dorado* (1965) 62 Cal.2d 338; *Escobedo v. Illinois* (1964) 378 U.S. 478; *Miranda v. Arizona* (1966), 384 U.S. 436.

on appeal. Although no case has been cited to us involving a trial after the *Miranda* decision relating to the necessity for a *Miranda* objection in the trial court to preserve the point for appeal, we see no reason why the same rule should not be applied to a *Miranda* warning as has been consistently applied to a *Dorado-Escobedo* warning. (*People v. Ray* (1967) ___ Cal.App.2d ___*; *People v. Crooks* (1967) ___ Cal.App.2d ___**.) Appellant implies that the trial court had a duty to exclude the testimony relating appellant's incriminating statements upon its own motion. He cites no authority for this proposition, and indeed there is none. The trial court did not err in failing to exclude appellant's extrajudicial statements to Sergeant Purcell.

Error in Limiting Cross-Examination

Appellant claims that the court prejudicially erred in sustaining the prosecuting attorney's general objection to a question posed to Sergeant Purcell on cross-examination, and in unduly restrict-

* 252 A.C.A. 1002,1029
** 250 A.C.A. 895, 900

ing the scope of cross-examination of Sergeant Purcell.

From Sergeant Purcell's testimony on direct examination the following picture emerged: Sergeant Purcell was investigating a ring of thieves whose specialty was the collection and distribution of stolen automobile interiors. During the week before the Price bucket seats were seen in appellant's parked truck, Purcell talked to appellant "numerous times." Price was able to identify his stolen bucket seats in appellant's truck. Purcell, in Price's presence, succeeded in eliciting from appellant explanations for his possession of the Price equipment which were false and evasive. The investigation culminated in the discovery of the remaining parts of the Price automobile and items from the Scott automobile. The prosecuting attorney brought out from Purcell, without objection by defense counsel, the seizure of almost two hundred other items of equipment.[2]

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[2] "Q [D]id you recover a number of seats from the defendant's place of business? A Yes. Q Did you find packing slips in any of the seats? A In the ones that I recovered, no. Q How many --

During defense counsel's cross-examination of Sergeant Purcell the following dialogue took place: "Q At any time after June 9th did you ever go upon Mr. Canada's premises again? A Yes. Q When was that? MR. BURNETT: I'm going to object as immaterial to any issue here. THE COURT: Sustained. If counsel want to approach the bench and show the materiality I will listen to you. (The following proceedings were had at the bench, outside the hearing of the jurors:) MR. UNMACHT: I want to establish that they seized about $10,000 worth of property and that this was all returned to the defendant, to show that he wasn't in possession of stolen property, and, second, that he was cooperative -- THE COURT: It wouldn't show anything except it might show that they couldn't prove it was stolen property. Objection sustained. MR. UNMACHT: How

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A Exception, sorry: except in the back of this set that we have here marked Exhibit 6. Q How many seats do you say that you recovered from his place of business? A The number of seats I couldn't say. I believe there was 171 items. I could be a little bit off. This is approximate. Q Most of which were seats and consoles? A Almost all seats and consoles except for 21, 22 radios."

about bringing in prior times that he was on the premises? The district attorney has asked him the different times that he was on the defendant's premises, and I would like to examine him on the same thing. THE COURT: That wouldn't make it admissible, if he did something that got by -- and I don't recall specifically that he did -- it is immaterial to this proceeding."

The trial court is necessarily given broad discretion in controlling the examination of witnesses and in limiting the introduction of evidence to relevant and material matters (Penal Code, §1044; Witkin, *Cal. Evidence* (2d ed. 1966) §1078, p.999.) In exercising that discretion, however, the court must accord defense counsel in a criminal case wide latitude in cross-examining the prosecution's witnesses because the right of cross-examination is considered implicit in the criminal defendant's constitutional right of confrontation. (*Douglas v. Alabama* (1965) 380 U.S. 415,418-419; Witkin, *Cal.Evidence, supra*, p.1106.) Constitutional standards are not measured in either feet or inches: The amount of room which must be given to defense counsel to probe a

prosecution witness depends upon all of the circumstances of a particular case. If the proof of guilt rests almost entirely upon the credibility of a single witness, the greatest latitutde must be given to the cross-examiner (e.g., *People v. Scholl* (1964) 225 Cal.App.2d 558,562-564; *People v. Little* (1956) 142 Cal.App. 2d 513,516-519; *People v. Ormes* (1948) 88 Cal.App.2d 353,359). On the other hand, if the proof consists of the testimony of several witnesses, as it did in this case, the cross-examination of one of them assumes relatively less importance and the breadth of cross-examination accordingly may be more restricted without depriving the defendant of a full and fair trial.

In asking Sergeant Purcell about his visits to appellant's premises after June 9, defense counsel expected to prove that the articles seized by Sergeant Purcell, other than those which were the subject of the information, were returned to appellant. He explained to the court that his purpose in eliciting this evidence was "to show that he wasn't in possession of stolen property, and second, that he was cooperative --."

How a return of seized equipment proves cooperativeness on the appellant's part eludes us, but even if some such inference could be drawn, the exclusion did not harm the appellant because Sergeant Purcell had already testified expressly that appellant was cooperative. From proof that seized articles were returned, an inference may arise that the returned items were not stolen. From that inference, together with proof that other articles were seized and not returned, the further inference may be drawn that the seized articles not returned were stolen. But no inference can be drawn that seized items which were not returned were not stolen from proof that other seized items were returned. The theories of relevance presented by defense counsel to the trial court did not sustain his contention.

Counsel on appeal urges that the exclusion was error because the defense attorney was foreclosed from dispelling the impression the jury received from the direct examination that appellant had received almost 200 items of stolen property. Appellant's counsel says: "Even though the evidence as to two sets of bucket seats

was weak, what about the other 168 or so items which were 'recovered?'" The evidence that appellant knowingly received the stolen articles charged in the information was not weak. It is true that the jury was not going to be impressed in appellant's favor by evidence at least hinting that he had possession of many other articles which the police thought were stolen. The argument made by counsel on appeal, however, was never even suggested to the trial court. Although the trial court might have been justified in taking a more liberal view than it did of the proposed inquiry on cross-examination, the unfavorable inferences which the jury might have drawn are at best tenuous and we cannot say that the trial court abused its discretion in sustaining the objection. Even if we assumed *arguendo* that the court erred in sustaining the objection, the error under all of the circumstances of this case was harmless. Moreover, Purcell's direct testimony about the other articles recovered was immaterial and that evidence could have been excluded if defense counsel had properly objected to it. He made no objection. "Legitimate cross-examination does not

extend to matter improperly admitted on direct examination. Failure to object to improper questions on direct examination may not be taken advantage of on cross-examination to elicit immaterial or irrelevant testimony. The So-called 'open the gates' argument is a popular fallacy." (*People v. McDaniel* (1943) 59 Cal.App.2d 672,677; Witkin, *Cal. Evidence* (2d ed. 1966) §1267, pp.1173-1174.)

The remaining claim is that the court erred prejudicially in excluding a line of interrogation about "prior times that he was on the premises." If what defense counsel had in mind was interrogating Sergeant Purcell about his activities on the premises before June 9 which had some connection with the items which were the subject of the prosecution or which had a bearing upon the conversations between Sergeant Purcell and the appellant, to which the latter had testified on direct examination, the proposed interrogation would have been entirely proper and the foreclosure of such examination would have been erroneous. It is obvious from the remarks of the trial court, however, that the court did not so understand the proposed line of inquiry. If the trial

court misapprehended the nature of the examination which defense counsel proposed, defense counsel should have reframed his inquiry or explained his purpose to the trial court. Not having done so, he cannot claim error on appeal based on undue restriction of the scope of cross-examination.

Cross-examining counsel is not required to make an offer of proof to establish his purpose in examining an adverse witness. (*People v. Burton* (1961) 55 Cal. 2d 328,344; *Tossman v. Newman* (1951) 37 Cal.2d 522,525; but compare *People v. Lyons* (1958) 50 Cal.2d 245,261.) "However, when the trial judge, by his general ruling that the inquiry was 'incompetent, irrelevant and immaterial,' showed that he was overlooking the fact that it might have a proper purpose, we think that defense counsel should have indicated to the judge the theory upon which he based his question. Instead, he went on to a different line of inquiry." (*People v. Burton, supra*, 55 Cal.2d at 344-345).

The judgment is affirmed.

We concur: HUFSTEDLER, J.
STEPHENS, J.
AISO, J.*

*Assigned by Chairman of the Judicial Council

VЬЬEИDIX „B„

"APPENDIX "B"

Order Due
March 22, 1968

ORDER DENYING HEARING
AFTER JUDGMENT BY THE COURT OF APPEAL
2nd District, Division 5, Crim. No. 13300

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

PEOPLE
v.
CANADA

Appellant's petition for hearing DENIED.

FILED
March 20, 1968
WILLIAM I. SULLIVAN,
Clerk

MOSK,
Acting Chief Justice

I, WILLIAM I. SULLIVAN, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding is a true copy of an order of this Court, as shown by the records of my office.

Witness my hand and the seal of the Court this 11th day of April A.D. 1968.

WILLIAM I. SULLIVAN

By D. Blomgren
Deputy Clerk

PROOF OF SERVICE BY MAIL
1013a and 2015.5 C.C.P.

STATE OF CALIFORNIA)
) ss.
County of Los Angeles)

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and employed in the County of Los Angeles, over the age of eighteen years and not a party to the within action or proceeding; that

My business address is 215 West Fifth Street, Los Angeles, California 90013, that on April , 1968, I served the within PETITION FOR WRIT OF CERTIORARI (Canada v. State of California) on the following named party by depositing a copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office in the City of Los Angeles, California, addressed to said party at the address as follows:

ATTORNEY GENERAL
STATE OF CALIFORNIA
600 STATE BUILDING
LOS ANGELES, CALIFORNIA 90012

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April , 1968, at Los Angeles, California.

_____

Subscribed and sworn to before me
this day of April, 1968.

_____
Notary Public in and for the State of
California.